

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

Affidavit

8-1
77-6051

To be argued by
NATHANIEL L. GERBER

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PL
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**United States Court of Appeals
FOR THE SECOND CIRCUIT**

Docket No. 77-6051

MUREL H. BRANCH,
Plaintiff-Appellant,
—against—

SOCIAL SECURITY ADMINISTRATION, SUPPLEMENTAL SECURITY INCOME, 1657 Broadway, New York City, M. STAMLER, B. JUNGMAN, W. LINDEN, R. ROHRS, THE SALVATION ARMY, THE ANTHONY RESIDENCE, 119 East 29th Street, New York City, HOWARD DANIELS and CANDACE DZIUBA,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**FEDERAL DEFENDANTS-APPELLEES'
BRIEF AND ADDENDUM**

ROBERT B. FISKE, JR.,
*United States Attorney for the
Southern District of New York,
Attorney for Federal
Defendants-Appellees*

NATHANIEL L. GERBER,
PATRICK H. BARTH,
*Assistant United States Attorneys,
Of Counsel.*

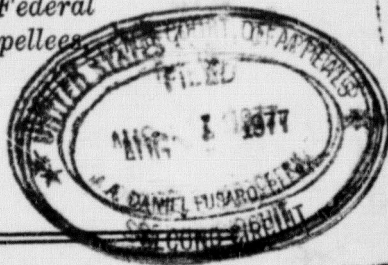


TABLE OF CONTENTS

	PAGE
Preliminary Statement	1
Statement of the Case	2
Issue Presented	6
ARGUMENT:	
Plaintiff's Claims For Judicial Determination Of Her Right To Continued Entitlement To SSI Benefits Are Barred By Her Failure To Ex- haust Administrative Remedies	6
CONCLUSION	11

TABLE OF AUTHORITIES

Cases:

<i>Aquavella v. Richardson</i> , 437 F.2d 397 (2d Cir. 1971)	9
<i>Califano v. Sanders</i> , 45 U.S.L.W. 4209 (February 23, 1977)	9
<i>Cappadora v. Celebreeze</i> , 356 F.2d 1 (2d Cir. 1966)	9
<i>Goldberg v. Kelly</i> , 397 U.S. 254 (1970)	9, 10
<i>Kingsbrook Jewish Medical Center v. Richardson</i> , 486 F.2d 663 (2d Cir. 1973)	9
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	9, 10
<i>St. Louis University v. Blue Cross Hospital Service</i> , 537 F.2d 283 (8th Cir. 1976), <i>cert. denied</i> , 45 U.S.L.W. 3399 (November 30, 1976)	8
<i>South Windsor Convalescent Home, Inc. v. Mathews</i> , 541 F.2d 910 (2d Cir. 1976)	9
<i>Weinberger v. Salfi</i> , 422 U.S. 749 (1975)	8, 9
<i>White v. Mathews</i> , Dkt. No. 77-6015 (2d Cir. July 18, 1977)	10

Statutes:

5 U.S.C. § 552a	7
5 U.S.C. § 552a(g) (1)	7
5 U.S.C. §§ 701 <i>et seq.</i>	9
28 U.S.C. § 41	8
42 U.S.C. §§ 401 <i>et seq.</i>	3
42 U.S.C. § 405(g)	8
42 U.S.C. § 405(h)	8
42 U.S.C. § 423	9
42 U.S.C. § 423(a)	9
42 U.S.C. §§ 1301 <i>et seq.</i>	2
42 U.S.C. §§ 1382(a) and (b)	3
42 U.S.C. § 1382(c) (1)	3, 7
42 U.S.C. § 1383(c) (1) and (2)	4
42 U.S.C. § 1383(c) (3)	4

Regulations:

20 C.F.R. § 416.1336	
20 C.F.R. § 416.222	3
20 C.F.R. §§ 416.1416 <i>et seq.</i>	4
20 C.F.R. § 416.1408	4
20 C.F.R. §§ 416.1421	4
20 C.F.R. § 416.1425	4
20 C.F.R. § 416.1450	5
45 C.F.R. §§ 567, 56.8	7

Rules:

Rule 12(b) Federal Rules of Civil Procedure	2
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United States Court of Appeals

FOR THE SECOND CIRCUIT

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—against—

SOCIAL SECURITY ADMINISTRATION, SUPPLEMENTAL SECURITY INCOME, 1657 Broadway, New York City, M. STAMLER, B. JUNGMAN, W. LINDEN, R. ROHRS, THE SALVATION ARMY, THE ANTHONY RESIDENCE, 119 East 29th Street, New York City, HOWARD DANIELS and CANDACE DZIUBA,

Defendants-Appellees.

FEDERAL DEFENDANTS-APPELLEES' BRIEF

Preliminary Statement

Plaintiff-Appellant Murel H. Branch appeals from an order entered in the United States District Court for the Southern District of New York on November 22, 1976. The order was entered pursuant to a memorandum decision of the Honorable Charles E. Stewart, United States District Judge, granting the respective defendants' motions to dismiss the complaint which were made pursuant

to Rule 12(b) of the Federal Rules of Civil Procedure (GA 29).*

This brief is respectfully submitted on behalf of the defendants-appellees Social Security Administration ("SSA"), an agency of the United States Department of Health, Education and Welfare, and four of its past or present employees, M. Stamler, B. Jungman, W. Linden and R. Rohrs (collectively the "federal defendants" or the "Government"). In addition to the federal defendants, plaintiff also named as defendants the Salvation Army and two of its employees as well as a shelter maintained by the Salvation Army, the Anthony Residence. The District Court simultaneously granted the motion by these defendants to dismiss the complaint.

Statement of the Case

Plaintiff commenced this action on February 11, 1976 challenging the suspension of her federal Supplemental Security Income ("SSI") benefits which she had been receiving pursuant to Title XVI of the Social Security Act (the "Act"), 42 U.S.C. §§ 1301 *et seq.* Plaintiff also contends that the manner in which various SSA employees questioned her at various interviews and/or allegedly misrecorded the results of the interviews damaged her character and reputation and that such actions resulted in the wrongful suspension of her SSI benefits. Although not clearly stated, it appears that the relief sought by plaintiff is judicial determination of her right to continued SSI Benefits (GA 8-9, 18).

* The appendix filed by plaintiff, hereafter designated "A", does not include a copy of the decision of the District Court, the federal defendants' motion to dismiss and affidavits in support of the motion or the pleadings. The Government has therefore prepared and attached to its brief an addendum containing certain relevant portions of the record, hereafter designated "GA".

The Government moved to dismiss the complaint on July 28, 1976 on the basis of affidavits setting forth plaintiff's benefit history with the SSA and demonstrating plaintiff's failure to exhaust available administrative remedies (GA 21-28). The complaint was dismissed on November 22, 1976. Shortly thereafter, plaintiff moved for reconsideration of the dismissal and on December 21, 1976, a second memorandum decision was entered by the District Court granting plaintiff's motion for reconsideration but affirming the prior decision dismissing the complaint (GA 30). It should be noted that plaintiff has filed voluminous papers in support of her various claims both in the District Court as well as on appeal.

To be eligible for SSI, an individual must be age 65, blind or disabled, and have total resources of less than \$1,500 after exclusions (GA 24). See 42 U.S.C. §§ 1382 (a) and (b). Plaintiff received SSI on the basis of age from January 1974 to April, 1975, during which time she received monthly benefits of \$375.00 (GA 24-25).

Redeterminations of eligibility for SSI benefits must be made at intervals not exceeding twelve months. See 42 U.S.C. § 1382(c)(1); 20 C.F.R. § 416.222. Plaintiff's eligibility was redetermined in December, 1974. Information submitted by plaintiff in connection with that redetermination as well as records of the SSA disclosed that in addition to her SSI benefits, plaintiff was also receiving \$244.70 per month in Federal Old Age, Survivors and Disability Insurance ("OASDI") benefits pursuant to Title II of the Act, 42 U.S.C. §§ 401 *et seq.*, and that she had accountable resources substantially in excess of the \$1,500 limitation (GA 25-26). As a result of these findings and pursuant to codified SSA procedures described

below, plaintiff's SSI benefits were suspended in April 1975 (GA 27-28).*

Pursuant to 20 C.F.R. § 416.1408, upon notice of an initial determination to suspend SSI benefits, the beneficiary is entitled, upon request, to a "reconsidered determination" prior to actual suspension, reduction or termination of benefits. The reconsideration procedures required by regulation provide that the beneficiary be given notice and an opportunity to be heard, the right to subpoena documents and adverse witnesses, and opportunity for cross-examination of such witnesses by the beneficiary or counsel. 20 C.F.R. §§ 416.1416 *et seq.* The extent to which these procedures are followed rests within the discretion of the beneficiary. 20 C.F.R. §§ 416.1416, 416.1421. Where the reconsidered determination is adverse to the interest of the beneficiary, he/she has a right to a formal hearing before a hearing examiner pursuant to 42 U.S.C. § 1383(c)(1) and (2) and 20 C.F.R. § 416.1425. The final determination of the Secretary of Health, Education and Welfare or his delegate after the hearing is subject to judicial review pursuant to 42 U.S.C. § 1383(c)(3).

Upon issuance of a notice of proposed adverse action, payment of benefits will be continued pending issuance of the reconsidered determination unless the beneficiary waives in writing his/her right to a continuation of payments. 20 C.F.R. §§ 416.1336, 416.1421. Where the reconsidered determination is adverse, these interim payments are treated as an overpayment to the extent that the beneficiary is not entitled thereto and must be reimbursed (GA).

* Plaintiff's SSI benefits were suspended in their entirety because of the fact that her total resources exceeded the \$1,500 limit. Even if plaintiff's resources did not exceed the limit, the fact that she was simultaneously receiving OASDI benefits would still require a reduction of her SSI benefits by the amount of her monthly OASDI benefits (GA 25-26).

A notice of planned adverse action regarding plaintiff's SSI entitlement was issued on April 15, 1975 and an adverse reconsidered determination was issued on November 7, 1975. On December 15, 1975, plaintiff requested a hearing pursuant to 20 C.F.R. § 416.1425. The case was assigned to an administrative law judge and a hearing was scheduled for July 6, 1976. Plaintiff however, failed to appear for the hearing on that date (GA). The hearing was rescheduled three times and on each occasion plaintiff failed to appear or show good cause as to why she could not appear (A 40). In fact, plaintiff refused to appear at the scheduled hearings because of the pendency of this action (A 41). As a result, plaintiff's request for a hearing was dismissed on the ground of abandonment pursuant to 20 C.F.R. § 416.1450.*

Although plaintiff was entitled to a continuation of benefits from the date of initial notice of adverse action (April 5, 1975) to the date of issuance of the reconsidered determination (November 7, 1975), payments were discontinued as of the April date. The reason for the discontinuance is that SSA personnel construed a statement signed by plaintiff on January 12, 1975 as constituting a voluntary waiver of continuation of payments (GA

* 20 C.F.R. § 416.1450 provides as follows:

With the approval of the presiding officer, a request for hearing may also be dismissed upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned a request for hearing if neither the party nor his representative appears at the time and place fixed for the hearing and either: (a) prior to the time for hearing such party does not show good cause as to why neither he nor his representative can appear; or, (b) within a reasonable period after furnishing of notice to him by the presiding officer to show cause, such party does not show good cause for such failure to appear and failure to notify the presiding officer prior to the time fixed for hearing that he cannot appear.

27).^{*} That statement provided in pertinent parts as follows:

I realize that I will no longer be entitled to SSI payments until my bank balance falls below \$1,500. I further realize that when my SSI payments resume, they will be reduced to allow for the fact that I am now receiving Social Security benefits. I wish to have these changes applied immediately so that no overpayment will be held against me. (A 23; GA 27).

Issue Presented

Did the District Court correctly grant the Government's motion to dismiss the complaint on the ground that plaintiff had failed to exhaust the available administrative remedies.

ARGUMENT

Plaintiff's Claims For Judicial Determination Of Her Right To Continued Entitlement To SSI Benefits Are Barred By Her Failure To Exhaust Administrative Remedies.

The plaintiff was entitled to a hearing on her claim of continued entitlement to SSI benefits; however, she has continually refused to utilize the administrative hearing remedy prescribed by the Act and has chosen in-

^{*} Notwithstanding this waiver and subsequent to the filing of this action in the District Court, the SSA offered to issue retroactive benefits to plaintiff for the period in question (May to November, 1975) with the proviso that should it ultimately be determined that plaintiff was not eligible for those benefits, these benefits would be treated as an overpayment (GA 28). Should plaintiff choose to pursue her administrative remedies regarding the issue of entitlement, the offer still stands.

stead to seek immediate judicial review of her claim. Thus, the issue on this appeal is whether or not plaintiff has alleged any reasons or circumstances sufficient to justify her attempted bypass of the remedies prescribed by the Act for administrative review of her claim and accompanying requirement that such remedies be exhausted prior to seeking judicial review.*

The jurisdictional provision of Title XVI, 42 U.S.C. § 1383(c),** which sets forth the hearing requirement,

* Arguably, in addition to judicial determination of plaintiff's right to continued SSI benefits, plaintiff also seeks the correction of allegedly erroneous information contained in the records of the SSA (GA 9). Should her complaint or amended complaint be so construed, the Privacy Act, 5 U.S.C. § 552a would bar the claim on the ground that plaintiff has not exhausted the available remedies as required by that Act. See 5 U.S.C. § 552a(g)(1). The regulations of the Department of Health, Education and Welfare relating to the disclosure and correction of records are set forth at 45 C.F.R. §§ 56.7, 56.8.

** 42 U.S.C. § 1383(c) provides in part as follows:

(1) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this subchapter. The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this subchapter with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within sixty days after notice of such determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse his findings of fact and such decision. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received

[Footnote continued on following page]

also provides for judicial review of the final administrative determination pursuant to 42 U.S.C. §405(g). Section 405(g) provides in pertinent part as follows:

Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow.

Review under this section is the exclusive form of judicial review available to an individual such as plaintiff challenging a termination of benefits. As provided by 42 U.S.C. § 405(h):

No findings of fact or decision of the Secretary shall be reviewed by any person tribunal, or governmental agency except as herein provided. No action against the United States, the Secretary, or any officer or employee thereof shall be brought under section 41 of Title 28 United States Code to recover on any claim arising under this title.

This language has been construed by the Supreme Court to preclude jurisdiction under other jurisdictional statutes which might not require exhaustion as a prerequisite to suit. *Weinberger v. Salfi*, 422 U.S. 749 (1975). See also *St. Louis University v. Blue Cross Hospital Service*, 537 F.2d 283, 287-290 (8th Cir. 1976),

at any hearing before the Secretary even though inadmissible under the rules of evidence applicable to court procedure.

* * * * *

(3) The final determination of the Secretary after a hearing under paragraph (1) shall be subject to judicial review as provided in section 405(g) of this title to the same extent as the Secretary's final determinations under section 405 of this title.

cert. denied, 45 U.S.L.W. 3399 (Nov. 29, 1976). It is now definitively established that the Administrative Procedure Act, 5 U.S.C. §§701 *et seq.*, does not afford an implied grant of subject matter jurisdiction permitting judicial review of agency action. *Califano v. Sanders*, 45 U.S.L.W. 4209 (February 23, 1977).

Similarly, invocation of the mandamus statute would contradict the express language of Section 405(h). The rule in this Circuit, established prior to the Supreme Court's decision in *Weinberger v. Salfi*, *supra*, is that where the Act establishes procedures for review of the Secretary's decision, a court may not review that decision by any other means. *South Windsor Convalescent Home, Inc. v. Mathews*, 541 F.2d 910, 913 (2d Cir. 1976); *Kingsbrook Jewish Medical Center v. Richardson*, 486 F.2d 663, 666-667 (2d Cir. 1973); *Aquavella v. Richardson*, 437 F.2d, 397, 402 (2d Cir. 1971); *Cappadora v. Celebreeze*, 356 F.2d, 1, 4-5 (2d Cir. 1966) (Social Security insurance claim). The administrative remedy at issue herein is provided by statute and no colorable challenge to its efficacy has been raised. Accordingly, jurisdiction may not be predicated upon mandamus.

The only arguably applicable exception to this rule is the Supreme Court's recent decision in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which held that the exhaustion requirements may be waived where there is "at least a colorable claim that . . . an erroneous termination would damage him [the beneficiary] in a way not recompensable through retroactive payments." *Id.* at 331 (footnote omitted). In *Eldridge*, the plaintiff contended, relying upon *Goldberg v. Kelly*, 397 U.S. 254 (1970), that certain termination procedures regarding disability insurance benefits (Title II of the Act, 42 U.S.C. § 423) did not satisfy due process requirements. Under Title II disability insurance termination procedures, benefits may be cut off after an initial adverse determination but prior to reconsideration and evidentiary hearing. *See* 42 U.S.C. § 423(a). The Court held that although these

procedures did not meet the standards set forth in *Goldberg v. Kelly*, *supra*, they nonetheless fully comport with due process and that an evidentiary hearing is not required *prior* to termination of disability benefits. 424 U.S. at 349.

Eldridge, however, is clearly distinguishable from the case at bar. Plaintiff has not raised a colorable constitutional claim challenging the termination procedure in question such as would be necessary under *Eldridge* to bypass the exhaustion requirement. Moreover, given the SSA's stated willingness to issue retroactive benefits up to the date of the reconsidered determination, should plaintiff so request, she cannot reasonably contend that imposition of the exhaustion requirement would damage her in a way not recompensable through retroactive payments.*

In any event, the SSI termination procedures fully comport with the due process requirements set forth in *Goldberg v. Kelly*, *supra*. These requirements are described as follows:

[T]he pre-termination hearing need not take the form of a judicial or quasi-judicial trial. We bear in mind that the statutory "fair hearing" will provide the recipient with a full administrative review. Accordingly, the pre-termination hearing has one function only: to produce an initial determination of the validity of the welfare de-

* This Court's recent decision in *White v. Mathews*, Dkt. No. 77-6015 (2d Cir., July 18, 1977), would not create an applicable exception to the exhaustion requirement. The issue in that case was limited to delay at the administrative law judge hearing stage. The Court held that mandamus jurisdiction was available to require the agency to conduct its proceedings with reasonable speed. Here, however, the efficacy of the SSA's procedures for review of claims has not been challenged and, as stated above, on four occasions, a hearing was scheduled by the agency and the plaintiff failed to attend (A 40).

partment's grounds for discontinuance of payments in order to protect a recipient against an erroneous termination of his benefits . . . Thus, a complete record and a comprehensive opinion, which would serve primarily to facilitate judicial review and to guide future decisions, need not be provided at the pre-termination stage. [footnote omitted]. *Goldberg v. Kelly*, *supra*, at 266-267.

In satisfaction of these requirements, an SSI beneficiary is given the requisite notice and opportunity to be heard, the opportunity to confront and cross-examine witnesses, and the right to counsel.

Accordingly, not only does plaintiff fail to raise a constitutional claim against the SSI termination procedure, there is in fact none that could reasonably be made.

CONCLUSION

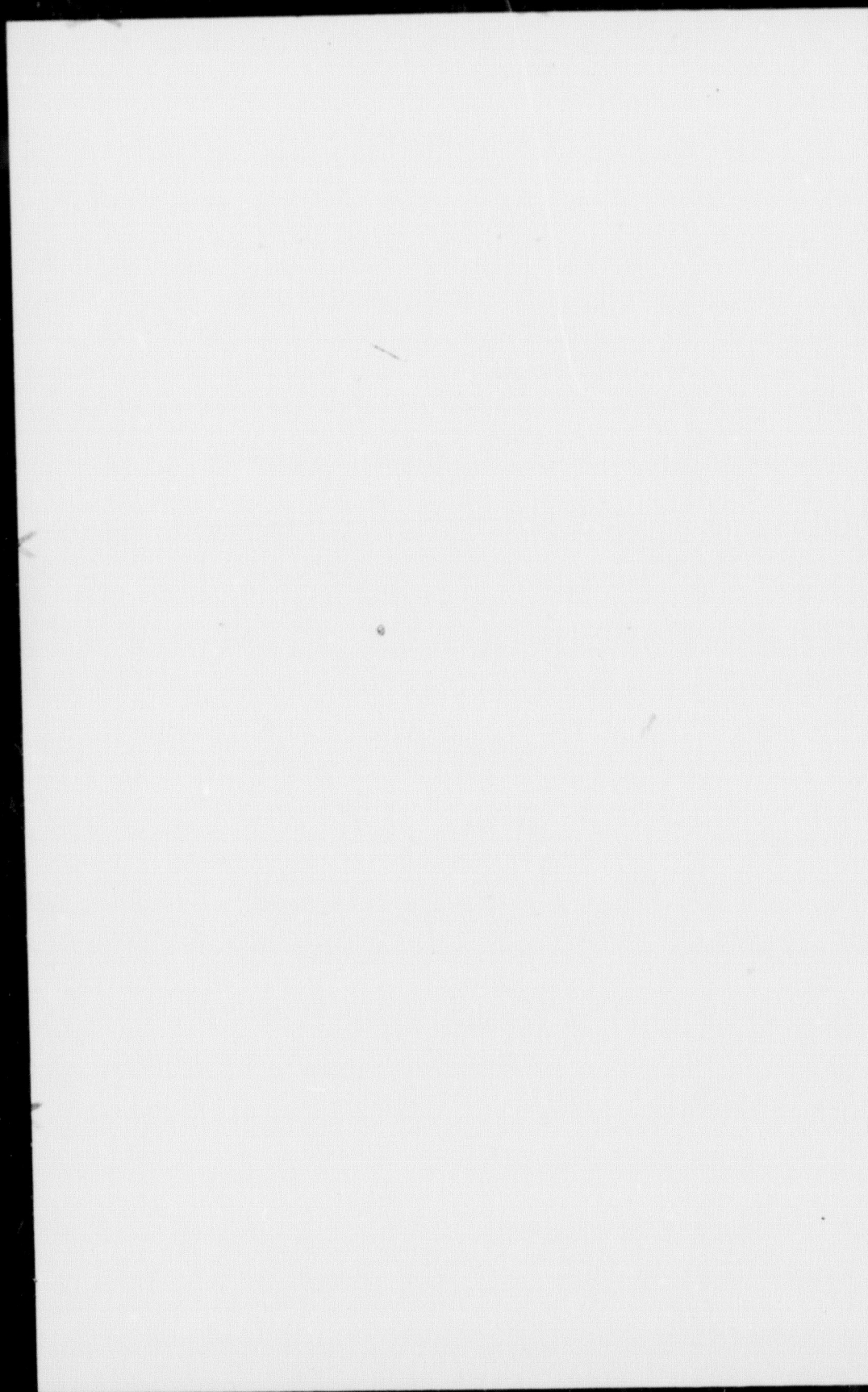
The order of the District Court should be affirmed.

Dated: New York, New York
August 1, 1977

Respectfully submitted,

ROBERT B. FISKE, JR.,
*United States Attorney for the
Southern District of New York,
Attorney for Federal
Defendants-Appellees.*

NATHANIEL L. GERBER,
PATRICK H. BARTH,
*Assistant United States Attorneys,
Of Counsel.*



ADDENDUM

Table of Contents

	PAGE
Complaint, filed November 2, 1976	GA-1
Addition to Complaint, filed March 3, 1976	GA-10
Federal Defendants' Notice of Motion for Dis- missal of Complaint with Affidavits, filed July 28, 1976	GA-19
Memorandum and Order entered November 22, 1976	GA-29
Memorandum and Order entered December 21, 1976	GA-30

GA-1

Complaint

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MUREL H. BRANCH

Plaintiff

—v.—

Social Security Administration/Supplementary Security
Income/1657 Broadway, New York City, and M.
Stamler, B. Jungman, W. Linden, R. Rohrs, et al.,

and

The Salvation Army/The Anthony Residence, 119 East
29 Street, New York City, and Lorraine D. Kuhl
and Candace Dziuba

Defendants

Murel H. Branch, Plaintiff, affirms that she has
resided continuously from February 1974 through Decem-
ber 1975 at 119 East 29 Street in the City of New York;

That the abode, known as the Anthony Residence, is a
congregate facility maintained by the Salvation Army;

That plaintiff has received monthly checks under the
Social Security Administration/Supplementary Security
Income, as hereinafter described.

I

Plaintiff believes that a federal court should have
jurisdiction over this case because:

A. It concerns a government agency, i.e., the Social
Security Administration of the United States Department

Complaint

of Health, Education, and Welfare, in the division of Supplementary Security Income.

B. Plaintiff resides, and has resided, in New York County, Borough of Manhattan, in the Southern District of New York, for twenty years; and

the substance of this complaint has all taken place in the said Southern District within the two years 1974-1975.

II

Plaintiff had received Supplementary Security Income checks on the first of each month for that month, beginning January 1, 1974 through April 1, 1975; then she had received a Notice of Decision that Supplementary Security Income payments were to be suspended beginning May 1, 1975; no such checks have been received since April 1, 1975.

a) SSI payments to Plaintiff as of that date were set at \$375. per month; from that amount plaintiff paid \$335 per month for rent and maintenance at the congregate facility where she has resided since February 1974.

b) Plaintiff paid rent due May 1, 1975, and June 1, 1975, from funds on hand, hereinafter described.

c) For the succeeding six months, July, August, September, October, November, December, 1975, plaintiff's rent has remained unpaid, due to said suspension of Supplementary Security Income checks for the eight months.

GA-3

Complaint

II

In September 1974 plaintiff received a large Social Security award retroactive for several years, payable to the plaintiff in her own legal name, Murel H. Branch.

a) Monthly payments at the time of the award were set at \$244.70 per month, payable on the third of each month for the preceding month.

b) Neither the award letter nor the award check gave any indication of restrictions or conditions as to plaintiff's use of all or any part of the award.

c) Plaintiff made immediate use of a considerable portion of the amount received.

III

a) In December 1974 plaintiff received notice from the Supplementary Security Income office requesting her to report to them for a check on eligibility.

b) Plaintiff complied by the date specified, and was asked by the interviewer if she received Social Security. Plaintiff answered that she was receiving SSA checks, and was asked to submit proof of her receipt and use of award.

c) Interviewer questioned plaintiff as to why she had not reported to SSA to SSI.

d) Plaintiff replied that, as both the SSA and the SSI offices were located at the same address, 1657 Broadway in the City of New York, she had thought that their records were coordinated on such matters.

Complaint

e) Interviewer became angry when plaintiff asked for information on the relationship between SSI and SSA, and accused plaintiff of concealment and implied intent to defraud.

f) Plaintiff had taken some papers to SSI, where interviewer immediately made photocopies of them, and asked for additional papers.

g) Plaintiff felt that such photocopying constituted unlawful search and seizure of her personal and private papers and possessions, and she so stated in written communications addressed and mailed to the SSI office at 1657 Broadway;

h) and that such photocopying of her personal records was in effect giving evidence against herself, and that such evidence would be used against her.

i) And, further, that such procedure was in violation of her constitutional rights to safeguard her own property.

IV

a) Plaintiff made several calls in person to SSI office. Each time interviewer used an intimidating manner in questioning her as to use of SSA award. Plaintiff felt that attempts were being made to arouse in her a feeling of guilt for having received the SSA award, as if she had no right to it, and should be penalized for having received it at all.

b) Interviewer also blamed plaintiff outright for having accepted SSI checks while receiving SSA payments. Plaintiff stated that she had received no information on this point.

Complaint

c) Interviewer in January 1975 had mentioned the difference between SSI and SSA amounts that would be adjusted so that SSI check would reflect this difference. The adjustment was not carried out.

d) The SSA amount of \$244.70 would not be enough to cover plaintiff's rent and maintenance at the congregate facility where she resides.

e) In April 1975 plaintiff received from SSI a notice of decision which demanded that plaintiff remit to SSI a total of overpayments in the amount of \$3920., without an itemized explanation.

f) Plaintiff by mail requested a written statement from SSI as to what was represented by said amount. No response was received by the plaintiff.

g) Plaintiff wrote several letters to SSI asking for verification of figures and other allegations. Plaintiff's letters were ignored. She was later informed by interviewers that they did not have time to read letters. Questions concerned overpayment, repayment, duplicate payments, error in amounts.

h) In interviews at SSI office, and in letters, plaintiff requested SSI to set up an impartial hearing, and was informed that SSI was not ready to hold a hearing.

i) One interviewer used a great deal of pressure in questioning plaintiff, who asked if it was intended to put the plaintiff through the third degree. The reply was affirmative.

j) The names of the interviewers appear in the caption: B. Jungman, W. Linden, R. Rohrs; one or two others. The name of M. Stamler is given as district

Complaint

manager of the Social Security office, 1657 Broadway, New York City, whom plaintiff has not met.

V

a) Plaintiff had paid May/June rent to the Anthony Residence when due, from S.S.A. funds, expecting an adjustment to be made between the SSI and SSA amounts.

b) Such adjustment was not made, and there was no further word from SSI. Plaintiff did not pay July rent nor succeeding months due to suspension of SSI checks.

c) In August 1975 plaintiff was asked by Candace Dziuba, social worker at the residence, to see her. Plaintiff did so.

d) Social worker asked plaintiff about rent. She already knew of suspension, and also of the retroactive award by SSA to plaintiff, by telephone from the SSI office.

e) Social worker wanted to go with plaintiff to SSI office. Plaintiff felt it was unnecessary, but permitted worker to set up an appointment for both with the SSI supervisor.

f) Appointment kept at SSI office with supervisor, R. Rohrs, with plaintiff and social worker. The interview took place in a large open space with no privacy. Employees at nearby desks could hear much of discussion, and appeared to be listening.

g) The administrator of the Anthony Residence, Lorraine D. Kuhl, sent a written request to plaintiff to see her on September 29, 1975, with the social worker, Candace Dziuba. In the presence of Candace Dziuba,

Complaint

plaintiff was told to leave in two weeks, by October 1975, if rental arrears were not paid.

h) Plaintiff requested administrator, Lorraine D. Kuhl, to put the request in writing, which was done, and plaintiff received it that day.

i) Plaintiff replied in writing that when rent is set on a monthly basis, a month's notice is legally required by either party to terminate.

j) Plaintiff still resides at the Anthony Residence; no further action has been taken as of this date.

VI

Confidentiality. Plaintiff alleges that her confidentiality is violated concerning the retroactive social security award, in that an SSI representative, an agent of the United States Government, gave the information to Candace Dziuba, and that through her the information was passed on to the administrator, Lorraine D. Kuhl and to other members of the Anthony Residence staff.

a) Plaintiff contends that the said award should not have been revealed to anyone by SSI agents at that time, while the basic SSI matter was pending, nor in advance, nor without the consent of the plaintiff, nor in advance of any discussion which might lead to resolving the situation. At that point it was not relevant to include the Salvation Army.

b) Plaintiff had understood, from her reading of SSA and SSI publications, that all discussions and considerations related to social security matters were to be kept confidential for the protection of the individual.

Complaint

c) It was evident on September 29 that Lorraine D. Kuhl knew of it, in a partial remark. She was the eighth person, including the SSI interviewers, who had talked with the plaintiff.

d) By said open discussion, too many people know about this matter among the administrative staff, which can be a detriment to the plaintiff, and place her in possible jeopardy of attempted robbery and harassment. It was to avoid such unnecessary risks in the interests of self-protection, that plaintiff undertook to guard herself.

VII

SUMMARY

Plaintiff initiates this action because she feels that Supplementary Security Income agents have placed the plaintiff in a position damaging to her character and reputation; and that

a) Plaintiff has unfairly been put in jeopardy for non-payment of rent for a period of eight months:

b) By reason of suspension of monthly SSI checks beginning May 1, 1975; and

c) By reason of inadequate SSA checks which do not apply to current month for which rent becomes due on the first of each month.

d) Plaintiff believes that suspension of SSI payments to her by SSI Notice of Decision mailed to her in April 1975 is contrary to a ruling by the United States Supreme Court that SSI checks cannot be stopped *before* a hearing is held.

GA-9

Complaint

e) Plaintiff believes that the manner of speaking used by the several interviewers toward her was intended to provoke and arouse argument and fear in plaintiff by the implication that plaintiff had intent to defraud by concealment and lack of cooperation.

f) Plaintiff believes that such allegations are unjustified and without foundation, and that such allegations presume guilt in advance of evidentiary intent.

Therefore, Plaintiff petitions the United States District Court for the Southern District of New York to permit this complaint to proceed for reasons set forth herein, and for redress of injurious allegations described.

Lastly, Plaintiff wishes in this action to straighten out all discrepancies and implications that derogate her character.

Plaintiff hereby certifies that this complaint has been prepared, written, and typed entirely by her, Murel H. Branch, without any assistance whatever.

(Signed) MUREL H. BRANCH
MUREL H. BRANCH

Date December 5, 1975
December 5, 1975

Murel H. Branch
Permanent Mail Address
P.O. Box 99
New York, NY 10024

Addition to Complaint

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Pro Se Civil Action File 76 Civ. 698

MUREL H. BRANCH

Plaintiff

—v.—

Social Security Administration/Supplemental Security
Income/1657 Broadway, New York City, and M.
Stamler, B. Jungman, W. Linden, R. Rohrs, et al.,

and

The Salvation Army, The Anthony Residence, 119 East
29 Street, New York City, and Lorraine D. Kuhl/
replaced by Daniels, and Candace Dziuba,

Defendants

Murel H. Branch, Plaintiff, hereby asks the Court to
admit the following as additional and pertinent to the
original complaint.

PLAINTIFF affirms that the original complaint was
prepared on the basis of the several issues raised by the
division of Supplementary Security Income during the
first six months of 1975.

PLAINTIFF affirms that later developments should
be included in the complaint as a part of the factors con-
cerned during the second half of the year 1975 and to
date in 1976.

Addition to Complaint

I

PLAINTIFF affirms that monthly rental at The Anthony Residence, 119 East 29 Street in the City of New York (registered with the City Buildings Department under No. 123708), had been set at \$335. per month, and that

PLAINTIFF had believed that rate to continue to be charged to her even after SSI payments had been discontinued as of May 1, 1975, or suspended.

PLAINTIFF had received on November 1, 1975, notice from the Anthony Residence that, due to the increase as of July 1, 1975, in SSI payments to its recipients, of \$10. per month, the Anthony Residence was requiring half of that amount,—\$5.—, be added to the rent to be paid, increasing the rate to \$340. The notice stated that recipient had been notified of the \$10. increase in SSI payments, enclosed with the July 1, 1975, check, presumably that the \$10. amount had been added to that check.

PLAINTIFF affirms that the November 1, 1975, notice was the first information she had received of such an increase. The notice also stated that the increased rental rate was to be retroactive to July 1, 1975, that \$5. per month was to be paid for the preceding four months in addition to the \$335. charged to the Plaintiff, and that beginning November 1, 1975, the monthly rate would be \$340.

PLAINTIFF believes that the Anthony Residence has charged her beginning July 1, 1975, at the rate of \$340. per month, although she has received no statement of account. (See original complaint, page 4 section V, a) and b), and g), h), i).

PLAINTIFF admits that no rent has been paid by her, as set forth in the original complaint, nor to date, because of the conditions mentioned.

Addition to Complaint

PLAINTIFF states that, effective July 1, 1976, her SSA checks were rendered monthly in the amount of \$264.30, an increase over the previous payments of \$244.70 per month.

PLAINTIFF states that the differences before and after the increases in both the SSI (which she had not received), and the SSA may be shown as follows:

	<u>Through June 30, 1975</u>	<u>Beginning July 1, 1975</u>
SSI	\$375.00	\$385.00 *
	Difference	\$10.00
SSA	244.70	264.30
	Difference	\$19.60
	\$130.30	\$120.70
	Difference	\$ 9.60

* November 1, 1975, notice from Anthony Residence of rent increase of \$5.00 did not state exact amount of SSI increased payment—only \$10 increase—hence plaintiff assumes it would have been \$385.00.

PLAINTIFF states that, either with or without the said increases, it would be impossible for her to pay stated rent of either \$335. or \$340. per month to the Anthony Residence without receiving SSI assistance.

II

Plaintiff affirms that in the course of interviews at the SSI office at 1657 Broadway, New York City, and

Addition to Complaint

also in letters to the SSI, she had requested that a hearing be arranged in this matter. The response by SSI representatives was that they were not ready for a hearing.

PLAINTIFF states that it was not until November 20, 1975, did she receive the form REQUEST FOR HEARING enclosed in a letter dated November 6, 1975. PLAINTIFF filled in the form, dated December 11, 1975, mailed it to 1657 Broadway, received acknowledgment dated December 15, 1975; and received further acknowledgment under date of December 16, 1975, from the Bureau of Hearings and Appeals at 250 Broadway.

PLAINTIFF, after inquiry, received advice from 1657 Broadway under date of February 3, 1976, that hearings would not be scheduled for from three to six months.

III

PLAINTIFF states that on December 15, 1975, she fell down a flight of eight steps at the Anthony Residence. She had started to walk down four flights because the elevator was out of order. The staff nurse, also walking down behind her, saw the fall, immediately called the ambulance, accompanied her to hospital emergency, ordered complete x-rays of Plaintiff, which showed no broken bones, and took her back to the Residence. The nurse stayed with her for five hours, from 7 p.m. to midnight, and followed up on her every day for a week, and at later times.

PLAINTIFF received in February 1976 from the Hospital, a bill for \$41.00 for emergency service. Plaintiff returned the bill as having no funds.

PLAINTIFF affirms that as of May 1, 1975, when SSI payments were suspended, Medicaid also was stopped, and that since then she has not received any monthly Medicaid

Addition to Complaint

card such as had been previously mailed to her for over a year at the Anthony Residence.

PLAINTIFF believes that there were no lasting effects resulting from the fall. Although she was badly jarred and had some bruises, her strength gradually returned and she has resumed normal activities. The staff nurse is highly commended for her prompt care at the time it was needed.

IV

One of the Defendants, Lorraine D. Kuhl has resigned as administrator of The Anthony Residence at the end of January. Howard Daniels has replaced her as administrator and taken over her responsibilities.

PLAINTIFF states that on Monday, February 9, 1976, the present administrator, Howard Daniels, spoke with her about rental arrears. PLAINTIFF stated that payment of her rent had been dependent upon monthly SSI payments, and that when checks were stopped she did not receive enough to cover the rent. Among the statements made to PLAINTIFF by the Administrator, were the following:

1. That if he had been the administrator he would not have permitted rental to fall so far behind.
2. That Plaintiff was at fault for remaining in the facility, and that therefore PLAINTIFF was guilty of theft, intentional as well as actual.
3. That by reason of that circumstance she was increasing the amounts that other residents had to pay, therefore was unfair to them.

Addition to Complaint

4. He advised PLAINTIFF to get an attorney. Plaintiff replied that she could not afford an attorney; Administrator said he knew that.

5. He then suggested PLAINTIFF go to Legal Aid. Plaintiff replied that Legal Aid carried an overload of cases. Administrator said Legal Aid would not take a case against the Government. Plaintiff knew that.

6. Administrator said that PLAINTIFF would have to go to Department of Human Resources and ask them to pay rental for her, including arrears. PLAINTIFF did not answer.

7. Administrator told PLAINTIFF that SSI certainly would not pay her any more, and that it was wishful thinking on her part to expect it. PLAINTIFF replied that she had not made any statement.

8. In a previous interview, Candace Dziuba told plaintiff that if SSI payments were discontinued, PLAINTIFF could not apply again. Plaintiff had said nothing of this sort. Candace Dziuba had also told PLAINTIFF previously that SSI hearings would be useless, as they would go against the Plaintiff anyway. Administrator Daniels now said the same thing.

9. Administrator stated that he would have to begin civil court action against PLAINTIFF for thirty days notice to leave; that then PLAINTIFF would be locked out of her room and refused all services if rent had not been paid in full.

10. PLAINTIFF said that she understood the requirement of thirty days notice to terminate arrangements between landlord and tenant.

Addition to Complaint

11. Administrator replied that The Anthony Residence was not a landlord, that it was a residential home, even though a verbal contract had been made between the management and the individual, and he considered that Plaintiff had broken the contract, by being dishonest.

12. Administrator asked several times why rent was not paid. Plaintiff repeated that rental she had previously paid was dependent upon her receiving SSI checks.

13. Administrator insisted that PLAINTIFF had in the beginning applied for, and requested, SSI checks. PLAINTIFF replied that she had never made such a request.

14. Administrator mentioned that PLAINTIFF was being watched in the dining room and elsewhere on the premises. Plaintiff had been aware of that, and replied that she had no intention of running away or of trying to evade any obligation if she had means to meet it.

15. A social worker had been called in by the Administrator at the beginning of the interview. Plaintiff requested that social worker leave, which she did. There were no witnesses during the interview between PLAINTIFF and Administrator.

16. Other comments made by the Administrator were: That ignorance of the law excuses no one; that the majority rules; and that this case was a matter of legality, not morality.

Under date of February 25, 1976, Administrator Howard Daniels in a letter requested immediate payment of arrears to avoid summary action. The letter mentioned a total as of March 1, of \$3,044.25. PLAINTIFF has requested a statement showing the monthly rates represented in this total.

Addition to Complaint

V

PLAINTIFF has noticed, on each of some ten or more visits to the SSI section of the Social Security Administration at 1657 Broadway, New York City, that the interviews are not private. There are always people within hearing of what is said, including a guard, who seemed to be listening. (Original complaint, page 4, Vf).

VI

PLAINTIFF has arranged for a permanent mail address as: Box 99, New York, N.Y., 10024, for privacy and security of her mail, and to prevent monitoring and inspection by unauthorized persons; with instructions to correspondents until notified of change by Plaintiff. A number of persons have questioned PLAINTIFF about it, seeming to regard it with suspicion.

During the fall of 1975 Plaintiff noticed that she apparently was being spied upon in the post office when picking up her mail, watching her take mail from her box, and what she did with it. During the same period she had noticed that she was being closely watched in the New York Public Library where she had gone to look up information on the Social Security System. A few times in stores someone would come up behind her as she was opening her purse to pay for purchases. There were several persons observed at these times, variously. PLAINTIFF believes she can identify each of them by sight, though she does not know their connections.

SUMMARY

Plaintiff petitions the Court to consider her request for this addition to her original complaint, as being necessary to a clear understanding of the factors involved.

Addition to Complaint

PLAINTIFF believes that the continually increased pressures being put upon her by reason of SSI actions and their insistence upon the Anthony Residence—it is known to Plaintiff that there is, and has been, frequent discussion between liaison people in both—constitute a detriment to her well-being and a considerable jeopardy by reflections upon her character.

PLAINTIFF believes that the allegations and charges against her, of theft, fraud, concealment, resources, funds from others, and other implications, should be proven by the accusers beyond any reasonable doubt, and that a legal decision by the Court should clear up any questions remaining unanswered.

PLAINTIFF testifies that she is the only person who knows, or can know, what she has done or tried to do in this matter, and that she speaks entirely for herself within her knowledge of the truth as she sees it.

PLAINTIFF certifies that this additional complaint has been prepared, written, and typed entirely by her, Murel H. Branch, without any assistance whatever.

(Signed) MUREL H. BRANCH

MUREL H. BRANCH

Date February 27, 1976
February 27, 1976

Murel H. Branch
Permanent Mail Address
P.O. Box 99
New York, NY, 10024

Notice of Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

76 Civ. 798 (CES)

MUREL H. BRANCH,

Plaintiff,

—v—

SOCIAL SECURITY ADMINISTRATION, *et al.*,

Defendants.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavits of Barry L. Powell and Nathaniel L. Gerber and upon all prior proceedings, defendants Social Security Administration, Mr. Stamler, B. Jungman, W. Linden and R. Rohrs (the "federal defendants") will move this Court on August 12, 1976 at 10:00 A.M. in Room 2602 of the United States Courthouse, Foley Square, New York, New York for: (1) an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure dismissing the complaint and amended complaint as to the federal defendants on the grounds that plaintiff has failed to exhaust her administrative remedies and that the complaint fails to state a claim as to said defendants over which this Court

GA-20

Notice of Motion

has jurisdiction; and (2) such other and further relief as is just.

Dated: New York, New York
July 26, 1976

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the Federal Defendants.

By:
NATHANIEL L. GERBER
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1946

Affidavit of Nathaniel L. Gerber

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

76 Civ. 798 (CES)

MUREL H. BRANCH,

Plaintiff,

—v—

SOCIAL SECURITY ADMINISTRATION, *et al.*,

Defendants.

State of New York)
County of New York : ss.:
Southern District of New York)

NATHANIEL L. GERBER, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York and in that capacity am responsible for the defense of this action as to the federal defendants. I submit this affidavit in support of the motion of said defendants to dismiss the complaint and amended complaint as to them and for the specific purpose of updating the accompanying affidavit of Barry L. Powell, sworn to on April 22, 1976.

2. Based upon conversations with Barbara Spivak, Assistant Regional Counsel for the United States Department of Health, Education and Welfare, I have learned

GA-22

Affidavit of Nathaniel L. Gerber

that a hearing was scheduled for July 6, 1976 by the defendant Social Security Administration in connection with plaintiff's claim for reinstatement of Supplemental Security Income Benefits pursuant to Title XVI of the Social Security Act. Plaintiff, although notified of the hearing, failed to appear on the schedule date.

s/

NATHANIEL L. GERBER
Assistant United States Attorney

Sworn to before me this
27th day of July, 1976.

.....

Notary Public

RALPH I. LEE
Notary Public, State of New York
No. 41-2292838 Queens County
Term Expires March 30, 1977

Affidavit of Barry L. Powell

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 76-698

Murel H. Branch,

Plaintiff,

v.

Social Security Administration, M. Stamler, B. Jungman,
N. Linden, R. Rohrs, The Salvation Army, Lorraine
D. Kuhl, Candace Dziuba,

Defendants.

I, Barry L. Powell, being first duly sworn, depose and say as follows:

1. I am the Officer in Charge of the Operating Policy and Standards Staff of the Bureau of Supplemental Security Income for the Aged, Blind, and Disabled, Social Security Administration, Department of Health, Education, and Welfare. I have directed employees under my supervision to determine the factual setting surrounding the above-captioned action. I make this affidavit based upon the factual information furnished me, and based upon my own knowledge of the operation of the Supplemental Security Income program.

2. Public Law 92-603, effective January 1, 1974, established in title XVI of the Social Security Act a program identified as the Supplemental Security Income program ("SSI"). 42 U.S.C. section 1381 et seq.

Affidavit of Barry L. Powell

3. To be eligible for the program an individual must be age 65, blind, or disabled, with no more than a monthly countable income of \$157.70 (\$140 for January 1974-June 1974; \$146 for FY 1975) after exclusions and with resources of less than \$1,500 after exclusions. See 42 U.S.C. sections 1382a, 1382b.

4. Those individuals who were eligible for and receiving state public assistance as of December 1973, on the basis of age, were converted to the new Federal SSI program and were not required to file an application in order to establish their status as eligible individuals. See 20 C.F.R. section 416.300.

5. Under P.L. 93-66, section 212(a), an amendment to the SSI program, an aged (or blind or disabled) individual who had received assistance under a state plan for December 1973,¹ was guaranteed, through a system of mandatory state supplementation, that the total amount of his SSI benefits plus other countable income would not be less than the total amount of public assistance plus other countable income such an individual received for December 1973. The amount of public assistance plus other countable income which an individual received for December 1973 under the state assistance plan in effect as of June 1973 is termed the individual's minimum income level.

6. Murel H. Branch, Social Security Number 121-12-5528, was a recipient of benefits, based upon age, under the New York State program of Aid to the Aged, Blind and Disabled. Her income level in December of 1973 was \$375.00 per month. Thus, Ms. Branch was con-

¹ P.L. 93-233 amends this section in a manner not relevant here.

Affidavit of Barry L. Powell

verted from the New York State program of Aid to the Aged, Blind and Disabled to the Federal Supplemental Security Income program with a guaranteed income level of \$375.00 per month. A review of Ms. Branch's payment history for 1974 and the first four months of 1975 indicates that while there was apparently some initial confusion as to the proper amount, prior to suspension of plaintiff's benefits in May, 1975, she was receiving \$375.00 per month from the Supplemental Security Income program.

7. Pursuant to 42 U.S.C. section 1382(c)(1) and 20 C.F.R. section 416.222, redeterminations of eligibility for and amount of benefits will be made at intervals not exceeding twelve months. In December 1974, Ms. Branch was called into a district office for a redetermination of her continuing eligibility for Supplemental Security Income benefits. At that time, Ms. Branch filled out and signed a form which included the information that she was currently receiving \$244.70 per month in Federal Old-Age, Survivors and Disability Insurance benefits and that she had \$2,400 in resources. In addition, the Social Security Administration has records showing that Ms. Branch is currently receiving a retirement insurance benefit of \$244.70 per month and was sent, during the month of September, 1974, a retroactive check for Federal Old-Age Survivors and Disability Insurance benefits in the amount of \$9,727.00. The receipt of the monthly checks and the receipt of the retroactive check both have an effect upon Ms. Branch's continuing eligibility for and amount of benefits payable under the SSI program. These effects are as follows:

a. The receipt of the \$9,727.00 in September of 1974 renders Ms. Branch ineligible for SSI benefits in that quarter because her countable income for that quarter exceeded the amount that she was entitled to receive from

Affidavit of Barry L. Powell

SSI, i.e. \$1,125.00 (\$375 a month for 3 months). See 20 C.F.R. section 416.1323. In addition, after the quarter in which the check is received, any money retained is considered a resource. SSI recipients may not have resources exceeding \$1,500. 42 U.S.C. section 1382b. Until Ms. Branch is able to adequately document that her resources are below \$1,500, she would, on that basis, be ineligible to receive any SSI benefits. Ms. Branch has stated, as noted above, that she had \$2,400 in resources.

b. Assuming that Ms. Branch is able to demonstrate that she has spent most of the \$9,727.00 in retroactive retirement insurance benefits and now has less than \$1,500 in resources, thus making her eligible for SSI benefits with regard to resources, her receipt of \$244.70 per month has the following effect upon her SSI benefit rate. She has a guaranteed SSI income level of \$375.00 per month. This does not mean that she automatically receives a grant of \$375.00 per month from SSI, but that her total income, including income from other sources, totals \$375.00. Thus, since she is now receiving \$244.70 in retirement benefits, her SSI grant amount should be reduced to \$150.30, i.e. the difference between \$375.00 and \$244.70, including a \$20.00 federal disregard which is applied to the \$244.70, bringing the countable income per month down to \$224.70.

8. Whenever it has been determined that a claimant is no longer eligible and his benefits should be terminated or that his benefit rate should be reduced, he is entitled to administrative review of that decision. The administrative review rights include the right to a reconsidered determination [(20 C.F.R. 416.1416, 40 F.R. 4316 (Jan. 29, 1975))] and a full evidentiary hearing (20 C.F.R. 416.1425). After administrative remedies have been exhausted, title XVI of the Social Security Act (42 U.S.C.

Affidavit of Barry L. Powell

section 1381(c)(3) as amended by P.L. 94-202) provides for substantial evidence judicial review. Payments will be continued at the prior rate only if review is requested by the recipient within 10 days from the date the recipient receives notice of a planned action to reduce, suspend, or terminate. If timely request is made, payments will continue until such time as a reconsidered determination is issued.

9. The file indicates the following, with regard to Ms. Branch's pursuit of administrative remedies and her entitlement to receive continuing assistance pending a reconsidered determination. As early as February 19, 1975 Ms. Branch stated, in a letter, her desire to pursue full administrative review of any determinations made by the Social Security Administration regarding her account. Other letters repeated this request, including two letters dated April 17, 1975, one of which specifically requested continuation of payment pending reconsideration. The file indicates that a Notice of Planned Action was issued on April 5, 1975. In addition, another Notice of Planned Action, dated June 2, 1975 is in file. On the other hand, in contradiction to this, Ms. Branch also indicated, at various times, that she was aware that she would not be entitled to receive both SSA-Title II retirement benefits and SSI. On January 12, 1975 she signed a statement which says, among other things,: "I realize that I will no longer be entitled to SSI payments until my bank balance falls below \$1,500. I further realize that when my SSI payments resume, they will be reduced to allow for the fact that I am now receiving Social Security benefits. I wish to have these changes applied immediately so that no overpayment will be held against me."

10. A reconsideration was held on August 7, 1975 and a reconsidered determination, dated November 7, 1975, was sent to Ms. Branch, informing her that the

Affidavit of Barry L. Powell

initial determination to stop her SSI checks was correct. On December 15, 1975, Ms. Branch filed a request for a hearing. The case has been assigned to an Administrative Law Judge, but no hearing date has been set and a hearing has not yet been held.

11. Ms. Branch has the right, if she timely requests it, to have her payments continued until she has received notice of a reconsidered determination. She also has the right to waive continuation of payments. Her statement of 1/12/75 was construed as a waiver of continuation of payments. However, if she now wishes to revoke her waiver, the Bureau of Supplemental Security Income is prepared to issue to Ms. Branch, retroactive SSI benefits for the months of May through November at the rate of \$375.00 per month. Should it be determined that Ms. Branch is not eligible for SSI payments for these months, the issuance of benefits for these months will result in an overpayment in addition to any overpayment she may have already received.

/s/ BARRY L. POWELL
BARRY L. POWELL
Officer in Charge of the
Operating Policy and Standards Staff
Bureau of Supplemental Security Income
Social Security Administration
Department of Health, Education,
and Welfare

Sworn to before me
this day of April 22, 1976.

/s/ PATRICIA B. PYLES
Notary Public
My Commission Expires July 1, 1978

GA-29

Memorandum, dated November 22, 1976

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

76 Civ. 698

Pro Se

Murel H. Branch,

Plaintiff,

—against—

Social Security Administration/Supplemental Security
Income/1657 Broadway, New York City, and M.
Stamler, B. Jungman, W. Linden, R. Rohrs, et al.,

and

The Salvation Army, The Anthony Residence, 119 East
29 Street, New York City, and Howard Daniels and
Candace Dzieuba,

Defendants.

STEWART, DISTRICT JUDGE:

The motions to dismiss the complaint under Rule 12(b) on behalf of defendants Social Security Administration, M. Stamler, B. Jungman, W. Linden, R. Rohrs, The Salvation Army, Howard Daniels, and Candace Dzieuba are granted.

SO ORDERED.

CHARLES E. STEWART
United States District Judge

Dated: New York, N.Y.
November 22, 1976.

GA-30

Memorandum, dated December 17, 1976

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

76 Civ. 698

Murel H. Branch,

Plaintiff,

—against—

Social Security Administration/Supplemental Security
Income/1657 Broadway, New York City, and M.
Stamler, B. Jungman, W. Linden, R. Rohrs, et al.,

—and—

The Salvation Army, The Anthony Residence, 119 East
29th Street, New York City, and Howard Daniels,
and Candace Dziuba,

Defendants.

STEWART, DISTRICT JUDGE:

We grant plaintiff's motion for reconsideration of our
November 22, 1976 decision. After reconsideration we
reaffirm our decision dismissing plaintiff's complaint.

SO ORDERED.

CHARLES E. STEWART
United States District Judge

Dated: New York, N.Y.
December 17, 1976.

AFFIDAVIT OF MAILING

State of New York)
County of New York) ss

Marian J. Bryant being duly sworn,
deposes and says that she is employed in the Office of the
United States Attorney for the Southern District of New York.

That on the

1st day of August 1977 s he served ^{two copies} ~~XXXXXX~~ of the
within Appellee's Brief

by placing the same in a properly postpaid franked envelope addressed:

Murel H. Branch
Box 99
New York, New York 10024

Weil, Gotshal & Manges
767 5th Avenue
New York, New York 10022

And deponent further says s he sealed the said envelope s and placed the sal in the mail chute drop for mailing in the United States Courthouse Annex, One St. Andrews Plaza, Borough of Manhattan, City of New York.

Sworn to before me this

1st day of August, 19 77

PATRICK H. BARTH
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-4526297
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1978

